

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

DAVID H. TRAN,

§

Plaintiff,

§

vs.

§

ITT CORPORATION,

§

Defendant.

§

CIVIL ACTION NO. 4:09cv468

JURY TRIAL DEMANDED

FEB 17 2009

Michael N. Milby
Clerk of Court

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, David H. Tran, ("Mr. Tran"), Plaintiff in the above-styled cause, and complains of ITT Corporation, ("ITT") Defendant, and for cause of action would respectfully show:

I.

JURISDICTION AND VENUE

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343 (3) and (4), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (hereinafter "Title VII") and 42 U.S.C. § 1981.
2. Venue is proper in the United States District Court for the Southern District of Texas, Houston Division, because the Defendant does business in said district and the causes of action asserted herein arose in said district. Venue is proper under 42 U.S.C. § 2000e-5(f)3.

II.

PARTIES

3. David H. Tran, Plaintiff, is a citizen of the United States and a resident of Missouri City, Texas. Mr. Tran is an employee of Defendant.
4. ITT Corporation, aka ITT Industries, Defendant, is a New York corporation doing business in the State of Texas, and service may be processed upon it by serving its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201. At all times pertinent hereto, Defendant was, is, and has been an employer engaged in an industry affecting commerce with fifteen or more employees for each working day in each of twenty or more calendar weeks in each relevant calendar year and meets the definition of "employer" set forth in Section 701 (b), (g) and (h) of Title VII, 42 U.S.C. § 2000e(b), (g) and (h).

III.

PROCEDURAL REQUIREMENTS

5. Plaintiff has exhausted his administrative remedies. On or about June 18, 2008, Plaintiff filed a Charge of Discrimination (EEOC Case No. 460-2008-03973) alleging race, national origin and age discrimination that satisfied the requirement of 42 U.S.C. § 2000e-5 with the Equal Employment Opportunity Commission ("EEOC") (attached hereto as Exhibit A). Such charge was filed within 300 days after one or more of the alleged unlawful employment practices in violation of Title VII occurred.

6. On January 21, 2009, Plaintiff was issued a Notice of Right to Sue in Charge 460-2008-03973, (attached hereto as Exhibit B) stating that Plaintiff could file a civil action under Title VII of the Civil Rights Act, as amended, within 90 days from the

receipt of such Notice. Plaintiff received a copy of the Notice on or about January 23, 2009. Plaintiff filed the Complaint in this case within 90 days after the date on which he received such Notice of Right to Sue.

IV.

FACTS

7. Mr. Tran (Plaintiff) who is Asian (Vietnamese) was born on September 10, 1967 in Vietnam. He began his employment with Defendant on June 19, 2006. Plaintiff was hired as a Senior Applications Engineer.

8. In October 2007, Defendant posted for a Sales Engineer position. In November 2007, Plaintiff applied for said Sales Engineer position.

9. Plaintiff was among two internal candidates of Defendant that applied for the Sales Engineer position. The second candidate, Tarek Kamel, Caucasian (DOB April 1, 1982) was born in the United States as an American citizen.

10. During Plaintiff's interview with Walter Lee, Manager of Sales for Defendant, he asked Plaintiff if he would be upset if he offered the position to someone else. In February 2008 Richard "Dick" McAdam, Vice President of Sales for Defendant, informed Plaintiff that the position have been offered to Tarek Kamel.

11. Although Plaintiff was the most qualified applicant, Defendant hired Mr. Kamel for the Sales Engineer position because he was younger, and born in the United States.

12. Plaintiff's coworkers constantly tried to intimidate him because of his age, race and national origin. Defendant also has subjected Plaintiff to a hostile work environment. Defendant's employees have treated Plaintiff that he would be fired and was perceived as making too much money.

13. Plaintiff has been treated differently than similarly situated non-Asian employees. Defendant does not intimidate Plaintiff's non-Asian coworkers.

V.

CAUSES OF ACTION

14. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 13 of this Complaint with the same force and effect as if set forth herein.

COUNT I: RACE DISCRIMINATION

15. Title VII of The Civil Rights Act of 1964, as amended in 1991, makes it illegal to discriminate against any employee on the basis of race, sex, national origin, or religion. Here, Defendant intentionally violated Plaintiff's federally protected rights by discriminating against him on the basis of his race and national origin. Plaintiff was treated differently than similarly situated non-Asian employees. In particular, Plaintiff was discriminated against in the form of disparate treatment in violation of Title VII.

COUNT II: AGE DISCRIMINATION

16. Plaintiff's age was a determining factor in Defendant's decision to not hire Plaintiff for the outside Sales Engineer position that he applied and was quailed for.

17. Plaintiff was also subjected to different terms and conditions of employment because of his age.

18. Defendant knowingly and willfully violated Mr. Tran's federally protected rights by discriminating against him on the basis of his age (41) in violation of the Age Discrimination in Employment Act (ADEA) as protected by 42 U.S.C. §626 *et seq.*

VI.

JURY TRIAL DEMAND

19. Plaintiff herein demands trial by jury.

VII.

PRAYER FOR RELIEF

20. As a direct and proximate result of the wrongful acts and conduct of Defendant, Plaintiff, has suffered reasonable damages. His damages include loss of income, loss of earning potential, mental anguish, stress, humiliation, mental anxiety, and embarrassment, which occurred in the past and which are reasonably expected to continue into the future.

21. Plaintiff is also entitled to recover exemplary damages because of the willful and malicious conduct of Defendant in wrongfully discriminating against his because of his race, national origin and age.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Lorine Daniels, prays that Defendant be cited to appear in court and answer this lawsuit, and that judgment be rendered on behalf of Ms. Daniels in an amount in excess of the minimal jurisdictional requirements of this Court, to include the following:

- a. Declaring that the acts and practices complained of herein are in violation of Title VII;
- b. Enjoining and permanently restraining these violations of Title VII;
- c. Directing Defendant to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated;

- d. Directing Defendant to place Plaintiff in the position he would have occupied but for Defendant's discriminatory treatment of him, and make him whole for all earnings he would have received but for Defendant's discriminatory treatment;
- e. Awarding Plaintiff the costs of this action together with reasonable attorney's fees, as provided by 42 U.S.C. § 2000e-5(k);
- f. Declaring that the acts of the Defendant and practices complained of herein are in violation of Title VII and the ADEA;
- g. Directing Defendant to pay Plaintiff compensatory damages and damages for his mental anguish and humiliation;
- h. Directing Defendant to pay Plaintiff pre-judgment and post-judgment interest;
- i. Liquidated damages pursuant to 29 U.S.C. §626(b); and
- j. Granting such other and further relief as this Court deems necessary and proper.

Respectfully submitted,

BROWN, BROWN & REYNOLDS, P.C.

Conrell Brown
Conrell Brown
Federal I.D No. 14085
State Bar No. 03106900
Erica Watson
Federal I.D. No. 21930
State Bar No. 24001879
6565 West Loop South, Suite 115
Bellaire, Texas 77401
(713) 334-2667 Telephone
(713) 334-6768 Facsimile
ATTORNEY'S FOR PLAINTIFF,
DAVID H. TRAN

I want this charge filed with the EEOC and the State FEPA. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary to meet State and Local requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

JOHN M. GIBSON, JR. SUBSCRIBED AND SIGNED THIS 11TH DAY OF JUNE, 1971.

SUBSCRIBED AND S

(month, day and year)

THIS FORM PROVIDED FREE OF CHARGE BY WWW.EEOC.OFFICE.COM

**PLAINTIFF'S
EXHIBIT**

U.S. EQUAL OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **David H. Tran**
4027 Calabria Bay Court
Missouri City, TX 77459

From: **Houston District Office**
1919 Smith St, 7th Floor
Houston, TX 77002



*On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

460-2008-03973

Shirley Almaguer,
Investigator

(713) 209-3314

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

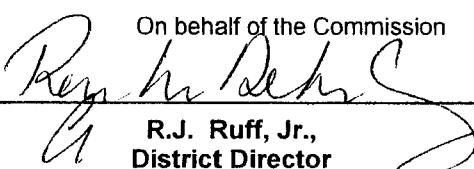
Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

Enclosures(s)

On behalf of the Commission

JAN 21 2009


R.J. Ruff, Jr.,
District Director

(Date Mailed)

cc:

George F. Corliss
Senior Director
ITT CORPORATION
1133 Westchester Avenue
White Plains, NY 10604

TWC-Civil Rights Division
 101 East 15th Street, Room T 144
 Austin, Texas 78778-0001

